February 12, 2015

Alma E. Gorse
Morgan County Planning Commission
77 Fairfax Street, Room 105
Berkeley Springs, WV 25411

Dear Ms. Gorse:

I am one of many residents of Morgan County who believe that the construction of the proposed Dollar General store in the Oakland Overlook subdivision is not in the best interests of our community. Our objections to the application for Dollar General in this subdivision are described in detail in the attached document. We request that copies of this letter and the attached document be distributed to all Commission members prior the February 17th public hearing.

These objections are summarized as follows:

- The proposed Dollar General construction would constitute undesirable "sprawl" under the West Virginia Code and the Morgan County Comprehensive Plan.

- The application is deficient because it does not include all the information required by the Morgan County Subdivision Ordinance.

- Although the developer is requesting seven separate waivers, in no case has it even alleged (let alone demonstrated) "Extraordinary Hardship" as required by the Subdivision Ordinance; therefore, the Commission has no basis upon which to grant the waivers.

- The granting of the requested waivers would reduce the property values of lots owned by nearby residents and therefore is not compliant with the requirements of the Subdivision Ordinance.

- The waiver of the entrance permit requirement would be particularly egregious given the level of community concern and the obvious dangers of entering and exiting Route 522. The Commission must remain involved in this issue in order to fulfill its responsibilities to protect the Community's welfare.

- The minimum lot size requirements were adopted by the Commission for sound reasons and should be maintained.

- The developer has consistently demonstrated a cavalier attitude toward the community and the rules of the Planning Commission and must be required to strictly comply with the Subdivision Ordinance.

Thank you for your attention to this matter.

Sincerely,

/s/

Paul A. Stern

Reasons Why Subdivision Application For Dollar General Should Be Denied

I. The proposed construction of a Dollar General in the Oakland Overlook subdivision would constitute unwanted "sprawl" under Chapter 8A of the West Virginia Code and the stated objectives of the Morgan County Comprehensive Plan; it should therefore be rejected.

A. Sprawl is defined in the West Virginia Code as "poorly planned or uncontrolled growth, usually of a low density nature, within previously rural areas, that is land consumptive, auto dependent, designed without respect to its surroundings, and some distance from existing development and infrastructure." [8A1-2 (aa)]

B. The proposed development fits each element of this definition.

C. Sprawl is not advantageous to a community. [8A-1-1 (a)(4)]

D. A goal of a governing body (in this case the Morgan County Commission) should be to reduce sprawl. [8A-1-1(b)(4)]

E. The Morgan County Commission has stated in the Comprehensive Plan for Morgan County that one of the objectives of the Plan is "[d]iscouraging the proliferation of strip mall style commercial centers that create congestion and sprawl." [Morgan County Comp. Plan, Chapter 9, Community Development, Objectives, page 4]

F. The Comprehensive Plan also expresses its desire to eliminate sprawl by stating that

[u]nplanned growth, loss of farmland and open space, and subdivision of rural land, are among the top concerns for Morgan County residents. Since preventive measures to protect the environment are preferable to corrective measures, this Plan should accentuate goals and objectives which will prevent scattered sprawl in the rural areas, loss of open space, and degradation of the environment. [Morgan County Comprehensive Plan (2007), Introduction, Comprehensive Policies, Page 8]

II. The subdivision application for the re-plat of Oakland Overlook does not meet the requirements of the Morgan County Subdivision Ordinance and therefore should not be considered by the Commission.

A. The developer is responsible for submitting the application to re-plat the Oakland Overlook subdivision. [Morgan County Ordinance Section 4.3] In this case it is unclear whether the re-plat application was submitted by the developer (Cross Development) or the land owner (Cacapon Associates). The application request appears to be from both. One of the waiver requests is from the land owner and the other from the developer. This has led to confusion as to the purpose of the application, e.g. who will be marketing and selling the single family lots, who will be

responsible for drafting the appropriate covenants and restrictions for Oakland Overlook, who will be responsible for road maintenance, and who will be suffering the "extraordinary hardships" required for waivers under Article VI of the Subdivision Regulations.

B. If the owner is different from the developer, as appears to be the case here, then the application must include a letter from the owner authorizing the developer to "act as his agent with full authority." [Ord. Section 4.4 (c)] No such letter has been provided.

C. The application must include a letter of transmission setting forth the purpose of the application. [Ord. Section 4.3 (f)] No such letter has been provided. This is more than a formality; the failure of the developer to provide this letter has contributed to the confusion referenced above.

D. The application must include a copy of the existing and proposed deed restrictions or protective covenants. [Ord. Section 4.4 (d)] These Covenants have not been provided. Again, this is more than a formality. The current Covenants for Oakland Overlook prohibit commercial development. [See Oakland Overlook Covenants, Conditions and Restrictions, Article VII Sections 1 and 3 as recorded in Morgan County Deed Book 228-34 on January 14, 2008.] This restriction (and others contained in the Covenants) was included in order to protect property values because the developer knew that such commercial development would devalue nearby lots. [See third "Whereas" clause of Covenants.]

III. <u>The waiver requests were not properly submitted by Cross Development and do not meet the requirements of Article VI of the Morgan County Subdivision Ordinance.</u>

A. The application submitted by Cross Development includes seven separate waiver requests. (In the Agendas for the December 9 and January 27 meetings only six are identified—no mention of Fire Marshall Review (CILP Apps.)) In support of these waiver requests two separate waiver request forms have been submitted. The one submitted by Cross Development appears to cover all the permit related requests. The applicant is stating that while it will ultimately obtain the required permits it should be allowed to proceed without them. The other waiver request (the date and timing of which is unclear) was submitted by Cacapon Associates. This request is for a permanent waiver of the minimum lot size requirement for single family homes.

B. The standard for a waiver required in Article VI is "Extraordinary Hardship." [Ord. Section 6.0] Neither of the two waiver requests even claims to meet this standard let alone demonstrates that it is satisfied.

a. The Cross request covering the permit waiver states that "substantial" hardship will result "without knowing if a PUD request will be granted by the County." "Extraordinary" hardship implies that there is something unique about this particular parcel of land or circumstance that is different from the norm. It is not the same as "substantial" hardship. The inconvenience of obtaining permits prior to Planning Commission approval is one that falls equally on all developers and is clearly anticipated in the Ordinance and thus is not sufficient to justify a waiver. Further, if the PUD re-plat request were to be granted by the Planning Commission then the status of the PUD request would be known, eliminating the justification provided by Cross for the permit waivers.

b. But the waiver request submitted by Cacapon Associates is even more deficient. Among other things, the request ignores the requirement in Section 6 of the Subdivision Ordinance that "[a] request for a waiver must be in writing" - this waiver request was submitted orally (apparently on January 27, 2015). More importantly, the waiver request makes no reference to any hardship whatsoever. It simply requests that the minimum lot size requirements for single family homes (which currently require a one acre minimum lot size for single family homes connected to a central sewer system) [Ord. Section 11.2.1.b]) be permanently waived.

c. According to Cacapon Associates the lots were approved for sale with a minimum lot size of less than one acre prior to adoption of the current rules. Although the waiver request states that the previous lot size exception should be "grandfathered" there is no provision in the Ordinance or elsewhere that allows for such "grandfathering," nor has there been any prior continuous use of the land as half-acre housing which would allow for such "grandfathering" under West Virginia law. In stark contrast to the non-existent "grandfathering" standard on which the waiver request attempts to rely, the real standard for this waiver request is whether requiring a one acre minimum lot size would result in "Extraordinary Hardship" under Article VI of the Ordinance. But no hardship whatsoever - not to mention the "Extraordinary Hardship" required by Section 6.0 - is alleged or could be alleged by either Cross or Cacapon Associates. Cross, for its part, has no plans to construct any housing at the Oakland Overlook site or to market the lots. [See Cross's responses to questions 1 and 2 of the Additional Information section Consideration Checklist.]

C. The Commission can determine that "Extraordinary Hardship" exists only if it finds "that the granting of the waiver shall not be detrimental to the public welfare or injurious to other property in the vicinity of the subject property." [Ord. Section 6.0]

a. As expressed to the Commission at the January 27th meeting, the community is particularly concerned that waiving the entrance requirement permit will increase the danger of entering and exiting Route 522. Merely meeting the DOH requirement for a left turn lane at the proposed Dollar General, without knowing the details of what DOH will require, is not adequate to alleviate these concerns nor can it stand as a substitute for the Planning Commission's obligation to protect the public welfare. In order to fulfill this obligation the Commission must be involved in approving the details of the turning lane, e.g. should north and south turning lanes be required, what will be the length and width of the turning lanes, etc. even beyond what DOH will require. This is a key part of the Commission's responsibility and merely letting the developer "work it out" with the DOH is insufficient to meet this responsibility. Further, the Planning Commission's ability to approve or disapprove the details of the proposed turning lane can only be exercised at the Preliminary Plat Public Hearing. Once it gives its approval or waives the requirement for such approval it cannot then weigh in if it doesn't like the terms of the DOH permit. [Ord. Section 4.8]

b. The construction of the proposed Dollar General will clearly be injurious to the property values of other parcels in the area. There is no question that already existing residential lots in immediate vicinity of the proposed Dollar General will suffer devaluation if the store is constructed. This is evidenced by the fact that the current Covenants for Oakland Overlook, in order to maintain property values, specifically prohibit any commercial development and contain other restrictive covenants designed to provide a homogeneous and consistent look for Oakland Overlook.

IV. <u>The proposed Dollar General Subdivision design does not comply with the requirements of the Morgan County Ordinance for a Planned Unit Development.</u>

A. Each particular area of housing within the PUD must meet the requirements for that area. [Ord. Section 11.5.4] As noted above, in this case the minimum lot size requirements for single family housing are not being met.

B. The PUD regulations require that mixed-use subdivisions be constructed so that there is a "harmonious blend between the various areas within the PUD. [Ord. Section 11.5.3] The plans presented by Cross provide for a stark juxtaposition of the Dollar General with the adjoining housing. There is no proposed buffering or blend between the various areas.

V. Throughout this entire application process the developer and the owner of the property have displayed a cavalier attitude toward the residents of Morgan County, the Subdivision Ordinance and the Planning Commission.

A. Beginning with the failure to comply with either the letter or the spirit of requirement to post a sign at Oakland Overlook providing notice to the community of the Public Hearing, the applicants have failed to take the Subdivision Ordinance seriously. Even now their handwritten sign on Oakland Road, rather than construction of a more prominent sign on 522, reflects their desire to minimize community involvement. Their incomplete and otherwise deficient application and waiver requests show that they have failed to take seriously what is required to submit a full and complete application to the Planning Commission as well as the Commission's responsibility to protect the public welfare in Morgan County.

B. Under these circumstances, and for the reasons stated above, the Commission should deny the application and waiver requests.